

## GENERAL TERMS AND CONDITIONS OF SALE

### 1. General Provisions

1.1. The following terms and conditions, as amended from time to time (the "**Terms and Conditions**"), shall apply to any and all offers, sales and transactions between ZETA USA Inc., a Delaware corporation with a place of business at Spring House Innovation Park, Building 8, Suite 320, 727 Norristown Road, Lower Gwynedd Township, PA 19002, and/or any of its affiliates (hereinafter referred to as the "**Seller**") and its customers (hereinafter referred to as "the **Customer(s)**") for the sale of Seller's products or services including (a) goods ("**Products**"); and (b) design, engineering or similar services ("**Design Services**"), (c) periodic maintenance ("**Maintenance Services**"); or (d) data collection, analysis or monitoring services ("**Data Services**") and together with the Design Services and Maintenance Services, the "**Services**"). By (a) executing a delivery document or statement of work (a "**Scope of Work**") or (b) submitting a purchase order or assenting to a quote or other ordering document signed or referenced by Seller for the provision of Products or Services that references these Terms and Conditions (together with the Scope of Work, each an "**Order**") Customer agrees to be bound by these Terms and Conditions. Seller may modify these Terms and Conditions from time to time, and such modifications shall be binding upon Customer.

1.2. Seller expressly rejects any different or additional terms or conditions contained in any documents issued or submitted by Customer. Differing terms and conditions of the Customer shall only become part of the agreement if they are explicitly accepted by the Seller in writing. These Terms and Conditions together with the applicable Order (collectively, the "**Agreement**") constitute the sole, exclusive, and entire agreement between Seller and Customer relating to the provision of any Products and Services.

### 2. Offers, Quotes and Orders

2.1. Offers of the Seller shall exclusively be made in written form.

All orders issued by Customer may be accepted only upon issuance by Seller of a written order confirmation. Seller may accept or reject an order in whole or in part. Products will be invoiced at the price in effect on the date of shipment and may be subject to additional conditions or changes in Seller's reasonable discretion. Documents and drawings prepared by Seller at the Customer's request shall be invoiced to the Customer unless they are explicitly included in the quoted price. Prices stated are subject to change without notice including, but not limited to, in the event of: (a) alterations in specifications, quantities, designs or delivery schedules; (b) increase in the cost of fuel, power, material, supplies or labor; and/or (c) foreign or domestic legislation that increases the cost of producing, warehousing, or selling the Products purchased hereunder. Seller also reserves the right to levy surcharges to cover any increased costs incurred providing the Products. Orders cannot be cancelled or modified, or shipment delayed after acceptance of the Order by Seller, except with Seller's written consent.

2.2. All technical data and plans, weights, dimensions, consumption data, performance data and other information presented by Seller in any pre-Order proposal, quote, RFP response or similar documents of the Seller are approximate values and estimations only and shall thus not be binding until a formal Order is agreed upon.

2.3. Without the prior approval of the Seller, any and all information and documents prepared by Seller, including but not limited to the information contain in Seller's proposals and quotes may not be used for other purposes in any form whatsoever. This shall also apply to the disclosure to or use of such information by third parties. Any and all documents and information provided by the Seller (including copies) must be returned to the Seller without delay in the event that a formal Order is not agreed upon.

2.4. The Scope of Work shall be mutually agreed to and executed upon receipt of the Seller's written order confirmation. Ancillary agreements to the Scope of Work must be in signed, written form in order to become effective. Any modification of the Scope of Work, taking into account the impact on the delivery time and costs, shall exclusively be made by means of a change order agreed to by the parties.

### 3. Scope of Services

3.1. The scope of Services shall be limited to include only the Products and Services, including any Work Product explicitly agreed upon in the Scope of Work.

3.2. Unless otherwise agreed in writing, the following are excluded from the Products and Services as applicable: foundations, cable ducts, pipelines for supply and waste disposal of all media, connection cables outside the system, power supply, unspecified devices and system components, the laying of pipes as well as of channel and pit coverings and the connections to existing systems or third-party systems.

3.3. It shall be the sole responsibility of the Customer to make available any information necessary for the Seller to provide their Services, e.g. in the form of specifications, plans, calculations or technical descriptions; such documents may not change the scope of Services.

3.4. Seller may create engineering drawings, designs, models or other documents that are based on or otherwise reflect specifications provided by Customer or mutually agreed upon by Seller and Customer in writing (collectively, the "**Specifications**").

3.5. Pursuant to a Scope of Work, Seller may create custom deliverables and other work product specifically for Customer, provided each is identified in the applicable Scope of Work ("**Work Product**").

3.6. Customer's use of the Products and Services shall at all times comply with all applicable laws, rules, and regulations, as well as the instructions of Seller and its third-party suppliers.

3.7. The Customer shall secure all required approvals under law and must bear the costs arising in this respect. Moreover, the Customer shall comply with all requirements, regulations and conditions under law. The Seller shall be under no obligation to issue warnings or co-operate in any form whatsoever.

3.8. The Seller shall be entitled to use the services of pre-suppliers and sub-contractors to provide the Services.

#### **4. Price and Payment**

4.1. The purchase price of Products and/or fees for Services shall be as stated on the order confirmation, Scope of Work or Order as applicable. Prices are exclusive of any applicable federal, state, provincial or local taxes or assessments, which shall be paid by Customer. Unless otherwise agreed in writing, all prices and deliveries are Ex Works (Incoterms 2020), uninsured, including loading at the factory, excluding, however, packaging, as well as any other expenses and charges. The prices stated in Seller's order confirmation do not include services and obligations that have not been explicitly set forth in such documents.

4.2. The Seller may make a price adjustment: (i) if Customer places an amended Order; (ii) in the event of Products or Services, the price of which depends on any development that goes beyond the Seller's control; and (iii) in the event of any amendment to legal or other requirements regarding the provision of Products or Services by the Seller.

4.3. Unless otherwise agreed to in writing, payment shall be made in cash or via confirmed bank transfer, without any deduction and free of all charges to the Seller. For Orders without an installation aspect, the following shall apply: (a) 30% advance payment is due seven calendar days after receipt of the Order confirmation; (b) 60% payment is due seven calendar days after Seller notifies Customer the objects stipulated in the Order are ready for shipment; and (c) 10% within one month after Seller's submission of the final invoice. In the event of Orders with installation part: (a) 30% advance payment is due seven calendar days after receipt of the Order confirmation; (b) 40% payment is due seven calendar days after Seller notifies Customer the objects stipulated in the Order are ready for shipment; (c) 20% payment is due seven calendar days after notification of the readiness for acceptance of the fully assembled system; and (d) 10% payment is due within one month after submission of the final invoice.

4.4. Any possible acceptance of checks or bills of exchange shall in all cases only be granted by way of payment. Any and all interest and expenses associated with this shall be borne by the Customer. Bills of exchange shall only be accepted after prior special agreement and subject to the possibility of discounting.

4.5. Discounts shall not be agreed upon.

4.6. The Customer shall not be entitled to withhold payments or to set off such payments with receivables of the Seller – irrespective of any claim of whatsoever nature.

4.7. Late payments are subject to interest charges from the date due until paid, at the rate of one and one-half percent (1.5%) per month, or the highest interest rate allowable by law (whichever is less), payable monthly. If any amounts due to Seller from Customer, for any reason, become past due for more than ten (10) days, Seller may at its option and without further notice withhold further delivery of Products and Services until all invoices have been paid in full.

4.8. If the Customer remains in arrears with regard to the acceptance of the subject matter of delivery or the fulfilment of their payment obligation for longer than two weeks after notification of the readiness for acceptance, then the Seller shall be entitled, upon seven days' notice and opportunity to cure to Customer, to terminate Customer's Order and to claim damages due to non-fulfilment.

#### **5. Delivery and Performance Dates**

5.1. Unless otherwise agreed to in writing, all delivery dates for the Products and performance dates for the Services are estimates only and subject to change without notice.

5.2. If Customer is unable to accept delivery when made available to the Customer for any reason for which the Seller is not responsible, then the delivery shall be deemed to have been made upon notification to Customer of the readiness for delivery. The payments for the Products/Services shall become due accordingly. Costs for Product/Work Product storage, surveillance, insurance and the like due to such circumstances shall be borne by the Customer.

5.3. Partial Product deliveries shall be permitted. Upon receipt, Customer shall unpack and visually inspect the Products. Customer shall promptly notify Seller in writing of any damaged or missing Products or components. Customer shall provide

Seller with the opportunity to inspect any shipment that includes any damaged or missing Products or components, including through video, photo and/or in person inspection.

5.4. The delivery and performance dates shall be reasonably extended if the Customer does not fulfil their contractual obligations in due time, in particular: (i) in the event that the payments are not made in accordance with the Agreement; (ii) in the event that the Customer does not provide the information required for the execution of the Order in due time, if the Customer does not release drawings and plans submitted for approval on time or does not comply with the necessary Order specifications; (iii) in the event that parts or documents to be provided by the Customer are not available at the point in time specified by the Seller in writing; (iv) in the event that the Customer does not timely render the support and service contractually agreed upon; and (v) in the event that official and third-party approvals or licenses required, for example, for the operation of systems have not been granted or obtained by the Customer in due time.

5.5. In the event Seller is unable to fully perform its obligations hereunder due to a Force Majeure (defined below), the performance period and other contractual obligations of the Seller shall be suspended for the duration of such Force Majeure. A "**Force Majeure**" means any unpredictable event beyond the reasonable control of Seller including, but not be limited to, flood, earthquake, war or orders of any government authority, operational interruptions, delays within the framework of deliveries made by sub-contractors that cannot be controlled, as well as any event that makes it commercially impracticable to continue production or that materially increased the cost of production. The Seller shall inform the Customer within a reasonable period of the existence and the expected duration of the event of Force Majeure.

## 6. Transfer of Risk

6.1. Risk of loss of passes to Customer when Product has left Seller's facility regardless of the pricing agreed upon for the delivery (e.g., CIF and others). Upon the Customer's explicit order, the Product shall be insured at the Customers expense and on the Customer's name.

6.2. In the event delivery is delayed as a result of circumstances for which the Customer is responsible, then risk of loss shall pass to the Customer upon Seller's notification to Customer of the readiness for delivery.

6.3. Without prejudice to the rights under Section 8, the Customer may refuse acceptance of any Products delivered to them only if the Products show material defects. Acceptance may not be refused because of minor defects.

## 7. Acceptance

7.1. Customer shall have five business (5) days from delivery of (the "**Inspection Period**") to determine if Products or Work Product materially conform with the Product description and/or Specifications set forth in the applicable Order. If such Product or Work Product is non-conforming, Customer must notify Seller in writing of such non-conformance during the Inspection Period (the "**Defect Notice**") and provide reasonably detailed information concerning such non-conformance. Following receipt of a timely delivered Defect Notice, Seller shall have thirty (30) days to remedy any identified and confirmed material defect and deliver conforming Product or Work Product to Customer (the "**Cure Period**"). Following any timely re-delivery of such cured Product or Work Product, Customer shall have an additional five (5) day period to re-inspect (the "**Re-Inspection Period**"). If such Product or Work Product, whether in whole or in part, is still non-conforming following the Re-Inspection Period, then Customer, may reject the non-conforming Product or Work Product by notifying Seller in writing of further rejection within five (5) days of the expiration of the Re-Inspection Period (the "**Rejection Notice**") and request to obtain a refund of the fees associated with such non-conforming Product or Work Product and such non-conforming Product or Work Product shall, as directed by Seller, be destroyed or returned to Seller. Customer acknowledges and agrees that any Product or Work Product shall be deemed accepted if: (a) Customer notifies Seller of acceptance; (b) Customer resells or otherwise makes commercial use of the applicable Product or Work Product (c) Customer fails to timely deliver a Defect Notice; or (d) Customer fails to timely deliver a Rejection Notice.

## 8. Retention of Title

8.1. Notwithstanding delivery and the passing of risk of loss in the Products or Work Product, title shall not pass to Customer until Seller has received payment in full of the purchase price for such Products or Work Product for which payment is due (the "**Retained Products**") and Customer grants ZETA (and ZETA reserves) a security interest in the Retained Products to secure that portion of the purchase price not paid at the time of delivery. Customer agrees to execute any financing statement requested by ZETA to perfect its security interest in the Retained Products. The Customer shall not be entitled to either pledge or assign the Retained Products by way of security. Seller shall have absolute authority to recover, sell or otherwise deal with or dispose of all or any part of the Retained Products in which title remains vested in Seller and all costs related to such action shall be borne by the Customer.

8.2. If third parties place a lien on the Retained Products or otherwise dispose of the Retained Products, Customer shall immediately notify Seller and provide Seller all information in order to enable Seller to protect its rights by means of the

appropriate judicial procedures. Seller shall have the right (but not the obligation), and Customer hereby authorizes Seller, to file financing statements evidencing its interest in the Retained Products.

8.4. Until title in the Retained Products is passed to Customer, Customer shall hold the Retained Products as Seller's fiduciary agent, and shall keep the Retained Products properly stored, protected and insured. Customer may not resell or use the Retained Products without the prior written approval of the Seller. In the event Retained Products are sold, the Customer shall keep the revenues Customer receives from such sale, including revenues from insurance, as a fiduciary on the account of Seller, and shall keep such revenues separate from any moneys or properties of Customer and shall pay them to the Seller without delay, if this is necessary to cover the debt secured by means of such retention of title. The Customer hereby assigns to the Seller the receivables resulting from the sale of any Retained Products, along with all ancillary rights to which the Customer might become entitled against the purchaser or any third party due to such resale. The Seller shall be authorized to enforce such claims themselves; however, the Seller undertakes to not enforce such claims if the Customer duly fulfils their payment obligations. Upon Seller request, Customer shall inform Seller of the assigned claims and their debtors, provide Seller any information necessary for such collection, provide Seller the associated documents and notify the debtors of such assignment. In the event that the Retained Products are resold with other goods, which are not the property of the Seller, then the Customer's claim against the purchaser shall be deemed to have been assigned in the amount of the payment still outstanding between the Seller and the Customer.

8.5. If the Customer handles, processes or combines the Retained Products any further with other goods, then the new goods created by such action, as appropriate, shall also be Retained Products until the purchase price has been paid in full.

## 9. Warranty

9.1. The Seller warrants that during the Warranty Period (defined below) the Products and Services will be free from material defects and will substantially comply with the Specifications, drawings, samples or other descriptions specified in the Order. Without limiting the foregoing, warranties do not cover normal wear and tear and no Seller warranty shall apply when the Products and Services are: (a) subject to negligence, misuse, abuse, accident, improper installation and handling, unusual environmental conditions or other extreme stress, alteration, repair by anyone other than Seller (or its authorized representative); (b) used with any third-party product or service (other than as specifically authorized in advance by Seller); or (c) used in violation of any provided instructions. 9.2. The "**Warranty Period**" shall be six (6) months and shall commence on the date of delivery.

9.3. Notwithstanding anything set forth herein to the contrary, and subject to applicable law, Customer's sole and exclusive remedy with respect to a breach of the warranties in Sections 9.1 shall be, at Seller's option, either: (i) the repair or replacement of the Product or Work Product that Seller reasonably confirms to be nonconforming; or (ii) a credit or refund of the purchase price associated with such Product or Work Product. Customer shall be responsible for transporting defective and replacement Products at its own expense. For Services, Seller's sole and exclusive liability, and Customer's sole and exclusive remedy, Seller shall, in its sole discretion, re-perform any Services that Seller reasonably confirms to be nonconforming or credit or refund the price of such Services at the pro rata contract rate. Such warranty claim shall not cover disadvantage caused to the Customer within the framework of the rectification of defects, such as during decommissioning of a system part or loss of production.

9.5. Notwithstanding anything to the contrary herein, unless otherwise specified by Seller in writing, Seller makes no warranties with respect to any third-party products sold by Seller ("**Third Party Products**"), except that Seller will use commercially reasonable efforts to pass through to Customer any warranty on Third Party Products given to Seller by the applicable third-party provider. Customer acknowledges that Third Party Products are subject to the terms of any applicable license or other agreement with the applicable third-party provider. Customer shall enter into any such agreement as required by the applicable third-party provider and comply with the terms thereof. The liability of the Seller for Third-Party Products shall be restricted to the assignment of those claims the Seller has against the sub-contractor.

9.6. The Seller offers no warranty for repair work, as well as alterations and reconstructions of equipment or systems not originally produced and sold by Seller.

9.7. The Customer shall be obliged to examine the Products and Services immediately after receipt and to notify the Seller in writing without delay of any defect detected by the Customer that is subject to warranty obligations. Any claim made by Buyer based on the warranties in this Sections 9 must be made within ten (10) days after the expiration of the applicable warranty period or be forever waived. All warranty claims of the Customer shall cease and be forever waived if the Customer repairs and/or tries to repair such defect on their own, or if the Seller is not granted the period of time and opportunity necessary, according to reasonable discretion, for the repairs and replacement deliveries which appear to be necessary in this regard. If Seller determines that any Product or non-conformity for which Customer has requested warranty service is not covered by the warranties herein, Customer shall be responsible for Seller's costs of investigating and responding to such warranty service request, at Seller's then standard rates, and any costs of return shipping to or from Customer.

9.8 THE FOREGOING EXPRESS WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. NEITHER SELLER NOR ITS AFFILIATES MAKE ANY OTHER WARRANTY AND SELLER SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS

FOR A PARTICULAR PURPOSE. THE ABOVE EXPRESS WARRANTIES ARE MADE EXCLUSIVELY TO AND SOLELY FOR THE BENEFIT OF CUSTOMER, AND CANNOT BE TRANSFERRED OR ASSIGNED TO, OR RELIED UPON OR UTILIZED BY CUSTOMER'S CUSTOMER(S) OR ANY THIRD PARTY WITHOUT THE EXPRESS WRITTEN CONSENT OF SELLER.

#### **10. Cancellation**

10.1. Unless otherwise agreed in writing, all Orders are non-cancellable, unless Seller consents to such cancellation in writing and Customer pays any applicable cancellation and/or restocking charges.

#### **11. Liability of the Seller**

11.1. IN NO EVENT SHALL SELLER BE LIABLE TO CUSTOMER FOR ANY LOSS OF USE, REVENUE OR PROFIT, LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO SELLER FOR THE PRODUCTS OR SERVICES AT ISSUE IN THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY.

11.4. The Seller shall not be liable for any damage caused by information, instructions, plans, layouts or calculations provided by the Customer.

11.5. The Seller shall not be liable for any alternation or repair work made to the Products, Work Product or Services by Customer or third parties without the prior written approval of the Seller.

11.6. Seller disclaims and shall not be liable for any damage caused to Products, Work Product or Services due to any of the following reasons: improper storage after transfer of risk, faulty assembly and/or commissioning by the Customer or third parties, non-compliance with the Seller's operating instructions, poor maintenance, normal wear and tear, excessive strain, excessive or single-sided heating, improper burner settings, unsuitable operating materials and replacement materials, poor constructional work, unsuitable foundation, chemical, electrochemical or electric influences, etc., unless such damage has been caused by the negligence of Seller.

#### **12. Operating and Maintenance Instructions**

The Customer shall strictly adhere to the operating instructions and warnings made available to them by Seller and shall not make any changes to the systems delivered, as well as their technical descriptions and operating instructions that are not authorized by Seller in writing.

#### **13. Confidentiality**

13.1 Customer acknowledges that in connection with the transactions contemplated by these Terms and Conditions it may come into possession of Confidential Information (as defined below) of Seller. Customer shall protect Confidential Information from unauthorized access, disclosure and use using the same methods it uses to protect its own confidential information, but in any event, no less than commercially reasonable measures. Customer shall not (a) use Confidential Information for any purpose other than in connection with using the Products and receiving the Services and (b) disclose or permit the disclosure of any Confidential Information to any third party, except Customer may disclose Confidential Information to its employees and contractors with a bona fide need to know the Confidential Information in connection with the transactions contemplated by these Terms and Conditions and who are bound by a written confidentiality obligation similar to these provisions. Customer shall be liable to Seller for a breach of these confidentiality provisions by its employees and contractors. "Confidential Information" means any and all of Seller's information in any form that is not generally known to third persons, including the existence and terms and conditions of this Agreement, as well as all information relating to the Products and Services, including all specifications, designs, operating conditions, processes, and methods relating thereto. Confidential Information does not include information that can be shown by documentary evidence (a) is or becomes generally available or known to the public through no fault of Customer; (b) is already known by or available to Customer prior to the disclosure by Seller; (c) is subsequently disclosed to Customer by a third party who is not under any confidentiality obligation to Seller; or (d) has already been or are hereafter independently acquired or developed by Customer without use of the Confidential Information. In the event Customer becomes legally compelled to disclose any Confidential Information, Customer shall (a) provide Seller with prompt notice thereof so that Seller may seek a protective order or other appropriate remedy and (b) cooperate with Seller in seeking such protective order or other appropriate remedy. In the event that Seller is unable to obtain such protective order or other appropriate remedy, Customer may furnish, without liability hereunder, only that portion of the Confidential Information which Customer is advised by counsel is legally required to be disclosed, and Customer will take commercially reasonable steps to obtain a protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information so disclosed.

13.2 Except as necessary to complete the sale of Products or perform the Services, without Customer's consent, Seller will not disclose to third parties any information submitted to it by Customer which is confidential and proprietary to Customer and clearly designated as such.

#### **14. Ownership and Indemnity**

14.1. Except as set forth below, upon payment of all applicable fees, Customer shall have exclusive ownership of all rights, title and interests in and to the Work Product and Seller hereby assigns to Customer all of its right, title and interest (including all intellectual property and other proprietary rights) in such Work Product, with the exception of Preexisting Materials embedded in or incorporated into Work Product, which shall remain property of Seller. "**Pre-Existing Materials**" means Seller materials that existed prior to and independent of the performance of the Services. Seller hereby grants to Customer a non-exclusive, perpetual, irrevocable, royalty-free, worldwide, transferable, assignable right and license to use the Pre-Existing Materials solely in connection with the use of the Work Product by Customer for internal purposes.

14.2 Customer will indemnify, defend and hold harmless Seller, its affiliates, and their respective officers, agents, representatives and employees from and against any and all claims, suits, proceedings, liabilities, judgments, obligations, losses, damages, penalties, fines, costs and expenses (including attorney's fees) arising out of or relating to any claim arising or resulting from: (i) any actual or alleged death or bodily injury to any individual arising out of the use of any Product, to the extent such claim results from that any specifications, designs, drawings, models or other information provided by Customer for use by Seller; and (ii) an allegation that any specifications, designs, drawings, models or other information provided by Customer for use by Seller infringes, misappropriates or otherwise violates the intellectual property rights of any third party.

14.3. All copyright and industrial property rights to the offer documentation, to the performances agreed upon as well as to execution documents, such as plans, sketches, other technical documents and samples, catalogues, brochures, illustrations and the like, shall be the rights of the Seller. The Customer shall not be entitled to either modify or alter or to reproduce the performances agreed upon or the execution documents without the explicit prior written approval of the Seller.

#### **15. Place of Fulfilment, Applicable Law and Venue**

15.1. The place of fulfilment shall be the delivering plant of the Seller.

15.2. These Terms and Conditions, all orders placed by Customer, and all disputes arising between Seller and Customer shall be governed by and interpreted exclusively in accordance with the laws of the State of Delaware, excluding its conflicts of law rules. The United Nations Convention on Contracts for the International Sale of Goods shall not apply and is hereby expressly disclaimed by Seller and Customer.

14.3. All suits, actions, or proceedings arising between Seller and Customer in connection with these Terms and Conditions shall be submitted exclusively to the jurisdiction of the state and federal courts located in the State of Delaware. Each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

#### **16. Miscellaneous**

16.1 **Assignment.** Customer shall not assign any of its rights or obligations under these Terms and Conditions without the prior written consent of Seller. Any purported assignment by Customer without such consent is null and void. Subject to the foregoing, these Terms and Conditions shall bind and inure to the benefit of the parties' successors and assigns.

16.2. **No Third-Party Beneficiaries.** These Terms and Conditions are for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

16.3. **Severability; Amendment and Modification.** If any term or provision of these Terms and Conditions is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of these Terms and Conditions or invalidate or render unenforceable such term or provision in any other jurisdiction. These Terms and Conditions may be amended or modified only by a writing stating specifically that it amends or modifies these Terms and Conditions and is signed by an authorized representative of each party.

16.4. **Independent Contractors.** The relationship between the parties is that of independent contractors. Nothing contained in these Terms and Conditions shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

16.5. **Entire Agreement.** These Terms and Conditions, and all Order Confirmations hereunder, constitute the entire agreement between Customer and Seller relating to the subject matter hereof, and supersede all prior and contemporaneous discussions, understandings, and agreements related to the subject matter hereof.

16.6. **Waiver.** No waiver by Seller of any of the provisions of these Terms and Conditions is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from these Terms and Conditions operate, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.